

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES M. ROBINSON,	§	
	§	No. 187, 2006
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware, in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Def. ID No. 0112008933
Appellee.	§	

Submitted: August 14, 2006
Decided: September 7, 2006

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 7th day of September 2006, upon consideration of the opening brief and appendix filed by the appellant, Charles M. Robinson, and the motion to affirm filed by the appellee, State of Delaware, it appears to the Court that:

(1) At a hearing in July 2003, the Superior Court adjudged Robinson guilty of violation of probation (VOP) and imposed a sentence.¹ On appeal, Robinson argued that the VOP conviction should be overturned for the Superior Court's failure

¹Robinson's VOP arose from his 2002 guilty plea and sentence for one count of Rape in the Fourth Degree.

to properly address whether he was competent during the course of the hearing. By order dated July 20, 2004, this Court affirmed the conviction.²

(2) In March 2006, Robinson filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). Robinson sought to overturn the VOP conviction based on (i) insufficient evidence; (ii) denial of counsel; (iii) denial of due process; and (iv) denial of freedom of religion.

(3) When considering a motion for postconviction relief pursuant to Rule 61, the Superior Court must apply the procedural requirements of the Rule before reaching the merits of the motion.³ In this case, the Superior Court applied those requirements and concluded that Robinson’s motion was procedurally barred under Rule 61(i)(3).⁴ This appeal followed.

(4) On appeal from the Superior Court’s denial of his motion for postconviction relief, Robinson has filed a motion to compel and a motion for stay. Robinson has also filed a motion to respond to the State’s motion to affirm.

²*Robinson v. State*, 2004 WL 1656503 (Del. Supr.).

³*Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁴*See* Del. Super. Ct. Crim. R. 61(i)(3) (2006) (providing that any ground for relief that was not asserted in the proceedings leading to the conviction is barred unless the movant shows “[c]ause for relief from the procedural default” and “[p]rejudice from violation of the movant’s rights”).

(5) Supreme Court Rule 25(a) prohibits an unsolicited response to a motion to affirm.⁵ In this case, the Court did not request a response from Robinson. The Court will deny Robinson’s motion to respond to the State’s motion to affirm.

(6) Robinson’s motion for a stay requests that the Court postpone consideration of the appeal to give him time to submit to the Court copies of mental health records that his family recently acquired on his behalf.⁶ The State opposes Robinson’s motion.

(7) When considering an appeal, the Court generally is confined to reviewing “the record,” *i.e.*, “the original papers and exhibits” that were filed with, and presented to, the trial court.⁷ In this case, Robinson has not demonstrated good cause for this Court to consider papers that were not filed with, and presented to, the Superior Court as part of the postconviction pleadings. The Court will deny Robinson’s motion for a stay.

(8) Robinson’s motion to compel challenges the Superior Court’s May 2, 2006 denial of his request for transcript at State expense. The State opposes the

⁵See Del. Supr. Ct. R. 25(a)(iii) (2006) (prohibiting “briefing, argument or response” to a motion to affirm unless requested by the Court).

⁶Robinson reiterated his request in a letter filed on August 23, 2006.

⁷Del. Supr. Ct. R. 9(a) (2006).

motion as procedurally improper. The Court has considered Robinson's motion to compel as a supplement to his opening brief.

(9) The opening brief, as supplemented, raises three arguments. First, Robinson argues that, given his mental state at the time, the Superior Court's failure to appoint counsel to represent him at the VOP hearing violated his right to due process. Second, Robinson argues that the Superior Court's denial of his request for transcript at State expense was an abuse of discretion because it prevented him from substantiating his due process claim in this appeal. Finally, Robinson argues that the VOP was obtained in violation of his constitutional right to freedom of religion.

(10) Robinson's due process claim, namely that he was mentally ill at the VOP hearing and should have had counsel appointed, is barred as formerly adjudicated pursuant to Rule 61(i)(4).⁸ Robinson has not demonstrated that reconsideration of the claim is warranted in the interest of justice.⁹ Moreover, Robinson has not demonstrated that the formerly adjudicated claim is a legitimate

⁸See Del. Super. Ct. Crim. R. 61(i)(4) (2006) (providing that "[a]ny ground for relief that was formerly adjudicated . . . is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice").

⁹*Id.*

basis upon which to reverse the Superior Court's denial of his request for transcript at State expense.¹⁰

(11) We agree also with the Superior Court's disposition, pursuant to Rule 61(i)(3), of Robinson's claim that the VOP was unconstitutionally based upon his refusal to conform to rules that offended his religious beliefs.¹¹ As noted by the Superior Court, Robinson made no mention of this claim at the VOP hearing. Nor did Robinson raise the claim in his subsequent appeal to this Court. In this appeal, the Court concludes that Robinson has not made a colorable claim of a miscarriage of justice to warrant application of the exception to the procedural bar.¹²

(12) The Superior Court did not abuse its discretion when denying Robinson's motion for postconviction relief on procedural grounds or when denying Robinson's request for transcript at State expense. The issues presented on appeal are controlled

¹⁰See *Bratcher v. State*, 1998 WL 984055 (Del. Supr.) (providing that the Superior Court is within its discretion to deny a request for transcript at State expense absent the showing of a basis for postconviction relief (citing *U.S. v. MacCollom*, 426 U.S. 317 (1976))).

¹¹In his postconviction motion, Robinson alleged that the VOP stemmed from his refusal on religious grounds to shave and to take "non-natural medications." In his opening brief on appeal, Robinson alleges that the VOP stemmed from his refusal to recite Christian prayers.

¹²See Del. Super. Ct. Crim. R. 61(i)(5) (2006) (providing in relevant part that the procedural bar under 61(i)(3) shall not apply to "a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction").

by settled Delaware law. To the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that Robinson's motion to respond to the motion to affirm, motion for stay, and motion to compel are DENIED. The State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice